



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201314047**
Release Date: 4/5/2013

Date: January 10, 2013

UIL: 501.03-30; 501.33-00; 501.36-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: November 8, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = date
C = date
D = individual
E = program
M = business
N = program
P = position
R = program
S = state

UIL #s

501.03-30
501.33-00
501.36-00

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were incorporated in the state of S on B. You were previously granted exemption under section 501(c)(3) of the Code. Your exemption was revoked for not filing Form 990 for three consecutive tax years. You requested reinstatement by submitting Form 1023 on C.

Your Articles of Incorporation state you are organized for beneficial, charitable, educational, health, mutual improvement, prevention of cruelty to animals and social purposes. Your Articles of Incorporation further state that you are organized exclusively for charitable

purposes as such purposes are defined by Section 501(c)(3) of the Internal Revenue Code ("Code").

Your Board of Directors currently has four unrelated members, one of which is D, who is your founder. D is also the sole owner of M, a for-profit organization providing similar services as described below. Your board typically will be composed of volunteers and/or future independent contractors, known as P, also discussed below.

You will conduct equine therapy services, provided by D, other trained volunteers, and consultants (P). You state that none of the potential trainers, including D, have a medical background nor do they possess certifications to conduct equine therapy. You provide what is termed as N, a form of therapy were "the movement of the horse can stimulate the brain cells and nervous system of the participants". In addition, you state that "the relationship formed with the horse builds confidence, self esteem and patience". You use a program called E - a plan for how to communicate with and ride a horse. E was created by D for use by M. E is a four part program that is open to the public and can take many months in process. You state that "the program creates independent thinking and following through with the best decisions possible."

Outline of E:

Class 1:

Communication with the horse. Demonstrations on haltering, brushing and grooming the horse. Trainer will provide for "mind-body behavior and safety" while client just sits on the horse.

Class 2:

Challenges client to what they learned in Class 1. This is mind -body coordination to learn to ride the horse.

Class 3:

Awareness of safety and survival.

Class 4:

This encompasses having the riders go out on rides to previously unknown areas. This shows how the clients make good riding decisions through "control" by staying in a better state of mind to enjoy a pleasurable activity to keep one self-balanced and secure.

A workbook that you use for E was requested on two separate occasions. You stated you will not share the information contained in the workbook with anyone and you stated "it is private information- to be helpful- with our process, and NOT presented as 'educational material' or instructional reading- before experiencing the project program". A curriculum was presented which focused on horse back riding instruction.

Initially, your application provided for fees to be charged for clients in your classes. The

fees were also indicated on your website. Subsequently, you removed the wording of fees from your website to be replaced with "suggested donations". You have cited your R donation program multiple times, and point to this as your explanation for how donations and funding would be put to use for everyone's benefit. R states you become fully functional, will improve to better serve your clients, you and D will be responsible for the functioning of the property, property values will increase, and there would be payback of financial support from D as well as future compensation for D. You link to R throughout your web site, requesting sponsored funds to help offset costs or outright donations from participants.

Individual clients do not require referrals by physicians. Any client that requires medical care is referred back to their physician. Clients are interviewed by D to determine if he/she or the entire family has issues of mental, physical, emotional, spiritual depletion, depression, or searching issues. D will observe body behavior for clues as to what is needed such as issues of confidence, trust, privacy or a need for a challenge, then determine if the client qualifies under your program. If it is determined that qualifications have not been met, the client will be referred to M to participate in riding lessons. The evaluative process to determine if the client qualifies as in need of medical care is based on a determination by D. D is also in the position to refer clients to M based on her opinion. You stated it cannot be determined what percentage of clients may be referred to M.

You also conduct riding clinics for families. You state that families experiencing fears, lack of mind-body coordination skills, lack of social skills, and the covering up of inner issues may participate. Interviews are conducted by D to determine if the family exhibits any of the conditions in the preceding paragraph to participate in the program that is determined by D to be therapeutic. If they do not qualify, they are referred to M to participate in riding lessons.

You will train individuals, including former clients, to become volunteers as trainers to conduct your activities. This is the P program, and training is done by D. Any material developed for use in P is meant for private use, not public instruction or education outside of P. There are no requirements to participate in P, such as a college education, degrees or certifications. Initially, while training, these volunteers will be conducting your activities. With experience, volunteers may become an advanced P, enabling them to work alone with clients, including at other therapy sites. Any work with clients must be approved by D. Subsequently, they will be earning funds from their own clients and/or working through M. These earnings will be reported to you at a central office. Profits from P will be split into thirds to pay for your property expenses, horse upkeep, and then to themselves. They would be responsible for a % administrative fee payable to you. They will also share in grant funding based on their percentage of income. Initially, you stated that D will be paid a fee for training P. You have subsequently stated that there will no longer be a fee for training.

You initially stated you would utilize M to benefit your operations. M will be furthering your purpose, is a necessary part of what you offer, and you and M have been working together,

citing a joint venture/partnership between you and M. As a partnership formed with M, you will be sharing the facility, horses and equipment. You intend for the purpose of M to be supportive of you by donating % of the profits to you. Any self referred or sought after riding students will be accepted by M as a for-profit to help support you by donating a portion of its revenues. However, you then came back and stated you stand alone - M is an entirely different program that is not functional.

You have submitted numerous sets of financial data, indicating bookkeeping problems over the past few years in sharing revenues and expenses between you, D and M. You have indicated personal income of D was deposited into your accounts, as well as fees and donations for your services, and personal as well as organizational expenses have been paid from that same account. Those expenses have included improvements made to the facilities and property on which you have been operating, including construction of stables, clearing of land, trees, brush, etc., maintenance and repairs and generally outfitting the location for your everyday use. You have stated as of the beginning of this year the bookkeeping has been corrected.

You initially anticipated funding from membership fees, riding fees and P program fees. You now expect to be funded primarily by donations or sponsors, promoting R for potential donors as encouragement. You will split the home expenses 50/50 between the personal use of the home by D and yourself for shared use of the property. There are six rooms in the house. D resides in three rooms and three rooms will be used by you as office areas. The barn and riding areas will be shared with M. Property improvements will be paid by you. Those fees will be applied to a rental agreement between you and D. The entire facility is leased to D from an unrelated party. D owns the horses to be used as well as all equipment. D will continue to own the horses and loan them to you at no charge. Overseeing the care and usage of the horses will be strictly determined by D. Initially, you had claimed that you pay all of the expenses for the horse's care and maintenance. At year end, M will pay % of its profits to you for use of the horses.

Law

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in

activities that accomplish one or more such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides an applicant must show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 98-15, 1998-1 C.B. 718₁ discusses two situations of a non profit owning a hospital and forming a limited liability company (LLC) with a for- profit corporation. The non- profit organization then contributes its hospital and all of its other operating assets to the LLC, which then operates the hospital. The LLC will then provide financing for the hospital. The second situation is a for- profit hospital that owns and operates a number of hospitals and provides management services to several hospitals it does not own. The for- profit hospital forms an LLC with a potential non- profit hospital. The non- profit hospital contributes all of its operating assets, including its hospital to the for- profit hospital in order to be provided management services and additional funding.

Rev. Proc. 2012-9, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

- (1) The applicant is responsible for the accuracy of any factual representations contained in the application.
- (2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.
- (3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the presence of a single non-exempt

purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes."

Church by Mail, Inc. v. Commissioner T.C. Memo 1984-349, *aff'd* 765 F. 2d 1387 (9th Cir. 1985), the Court affirmed a tax Court decision. Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. A for-profit company, controlled by the same ministers, provided the printing and the mailing. The services were provided under two contracts. The contracts were signed by the two ministers for both the organization and the for-profit company. The organization's business comprised two-thirds of the overall business done by the for-profit company. The court determined that there was ample evidence in the record to support the finding that the organization was operated for the substantial non-exempt purpose of providing a market for the services of the for-profit company.

Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), *aff'd*, 846 F. 2d 78 (Fed. Cir.), cert. denied, 488 U.S. 917, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the Claims Court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a non-exempt commercial purpose. The Court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of education and charitable activities purpose of plaintiff's adoption service, is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that organization was not exempt. While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were the two founders and a related individual. The initial board was replaced several times until the two founders were no longer on the board. At all times these two individuals were the organization's officers. Salaries had been paid to them and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view: "Although

those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid."

Application of Law

You have failed to meet the organizational test as required under Section 1.501(c)(3)-1(b)(i) of the regulations because your Articles of Incorporation include several purposes, including beneficial, mutual improvement and social activities, that are not purposes exclusive to section 501(c)(3) of the Code.

Per Section 1.501(c)(3)-1(c)(1) of the regulations, an organization will not qualify if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. You are operating in conjunction with and are indistinguishable from M, a for profit LLC. You are formed to conduct services in exchange for sponsorships or donations, through your training and horse riding programs. You have a program in place to train individuals with the goal of having those individuals set out on their own, further growing the business of M and the training program of D. Each of these is more than insubstantial in nature and do not serve 501(c)(3) purposes.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. You admittedly commingled funds between personal and organization accounts, paying expenses of D and expenses for horses and materials owned by D. You allow for referrals of individuals who D deems unqualified for therapy through you to M – D's for profit business, directly increasing M's business. You have established a training program essentially franchising programs D has created, establishing future benefits for D and potentially M once new clients are received.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides an applicant must show that it serves a public rather than a private interest. You have executed capital improvements on a facility that is privately owned. You have been unable to fully substantiate these improvements. You have been unable to substantiate that the owner of the facility will not benefit from your improvements, as there is no documentation on what would occur in the event you had to vacate the facility, nor is there any documented agreement on the terms of your use of the facility. As you have been unable to document the public benefit of the improvements done to this facility, you have not proven your assets will not inure to insiders or be used to privately benefit certain individuals.

You have failed to establish you are not operating in a manner that would substantially benefit D and M, thus precluding exemption under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Like the organizations in Better Business Bureau, Easter House, KJ's Fund Raisers, Inc., and Church by Mail, you are controlled by an individual, D, who would receive a substantial private benefit from you through her for profit organization, M. You operate closely with M. If it is determined by D that an individual/family would not meet the criteria to be a participant in your activities, a referral is made to M. Your proposed budget, for

when M will be fully operational, indicates that all rental, utility, equipment, supply maintenance and contract labor expenses are to be paid by you. A subsequent response indicates that "both will split several areas of expenses 50-50 – for shared use of property". D has substantial control over your operations and you have been unable to document how your programs will benefit public, rather than private, purposes.

A fundamental requirement for an organization that seeks exemption from federal income taxes is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Your organizational structure and manner of operation results in inurement and/or private benefits to D and M in the form of payments for services and business referrals. You did not show how you prevent the possible inurement and/or private benefits to D and M. Therefore, you failed to establish that you are not operated for your founders' private interests as the organizations in KJ's Fund Raisers, Inc. v. Commissioner, supra, and Church by Mail. You are controlled by D and D would receive a substantial private benefit from you.

As required by Rev. Proc. 2012-9 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators. Multiple requests for information resulted in multiple versions of your activities, financials and operational structure. Varying sets of financial data were provided, with income and expenses changing throughout. You indicated a close connection with M, an LLC, only to later state M was not operational. You have continually changed your sources of income, from fees to sponsors to donations. It is unclear from your responses what the involvement or relationship is between you, D, M, other trainers, outside facilities and owners of the land where you operate. You have submitted inconsistent and conflicting information throughout the application process. As a result, you have not demonstrated that your operations further exempt purposes.

Applicant's Position

A percentage of the profits of M will provide funding to you to conduct therapy services provided free to individuals. You also referred to and provided law, Rev. Rul. 98-15, when you stated that a limited liability partnership will be formed with M. You have referred to Rev. Rul. 98-15 to substantiate your position that a joint venture between you and M would be necessary for you to conduct charitable activities.

Service's Response to Applicant's Position

You provide services to individuals for "suggested donations" and sponsorship monies. Through your close association with M, your activities inure to the benefit of D and the payment of expenses by you attributable to both D and M. Any public benefit is incidental to the inurement bestowed on D either directly or indirectly through M.

In revenue ruling 98-15, none of the officers, directors or key employees of the non-profit organization had any interest in the related for-profit entity. You are unlike RR 98-15 as a key member of your governing body, D, is a member of your board of directors, an officer

and an employee and has a direct interest in the related for profit entity, M. You have not established that you are not organized and operated for the benefit of private interests.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes. You fail both the organizational and operational tests. You are operated for the private benefit of D, an insider, further resulting in inurement. Any charitable purposes for which you may operate are only incidental to this more than insubstantial non-exempt purpose. Accordingly, you do not qualify for exemption under section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892